U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: DEC 27 2012

OFFICE: NEBRASKA SERVICE CENTER

FILE: [redacted]

IN RE: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (NSC Director). It is now on appeal before the Acting Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a global software consulting business. It seeks to permanently employ the beneficiary in the United States as a financial manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). This section of the Act provides for immigrant classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Case history

The Form I-140, Immigrant Petition for Alien Worker, was filed by Minecode LLC (Minecode) on March 8, 2007. The petition was accompanied by a photocopied ETA Form 9089, Application for Permanent Employment Certification, which had been filed by Minecode LLC at the Department of Labor (DOL) on December 21, 2005, and certified by the DOL on January 13, 2006.[1] Also accompanying the petition was a letter from Minecode LLC requesting that the priority date of December 2, 2004, applicable to another Form I-140 petition (LIN 07 113 52043, also filed on March 8, 2007) seeking third preference classification for the beneficiary, be retained for the second preference petition in accordance with the regulation at 8 C.F.R. § 204.5(e).

On July 22, 2010, the NSC Director issued a Notice of Intent to Deny (NOID) the petition. Among several evidentiary deficiencies cited in the NOID, the NSC Director indicated that the beneficiary did not appear to have the requisite educational credential(s) specified on the labor certification. Counsel responded with a brief, dated August 19, 2010, and additional documentation addressing each of the points raised in the NOID.

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[1] The certified ETA Form 9089 underlays another Form I-140 petition by Minecode LLC (EAC 06 085 51279) that likewise sought second preference classification for the beneficiary as an advanced degree professional. That petition was approved by the Director, Vermont Service Center, on August 29, 2006. The approval was subsequently revoked by the Director, Nebraska Service Center, on February 22, 2011. The revocation decision was appealed to the AAO, which is affirming the revocation and dismissing the appeal in a decision being issued simultaneously with the instant decision.

As a preliminary matter, counsel stated that Longtop International LLC (Longtop) is the new name of the original petitioner, Minecode LLC. Counsel noted that Longtop continued to use the same Federal Employer Identification Number (FEIN) as Minecode and that the beneficiary's Forms W-2, Wage and Tax Statements, for the years 2006-2008 identified his employer as Minecode in 2006 followed by Longtop in 2007 and 2008. A letter was submitted from Longtop's vice president, dated August 16, 2010, explaining that Minecode was acquired in March 2007 by Longtop International Holdings Limited (LTI). While a portion of the Minecode business was spun off into a new entity – Minecode USA LLC – LTI was spun off to its shareholders in July 2007 under the name of Longtop International LLC, which retained the old Minecode's FEIN and was registered in the State of Washington as the new name for Minecode LLC.

On February 22, 2011, the NSC Director issued a decision denying the petition. The primary ground for the denial was the petitioner's failure to establish that the beneficiary's educational credentials from India – which include a three-year bachelor of commerce degree from an Indian university and certificates from two accountant institutes in India – are equivalent to a U.S. bachelor's degree in accounting, finance, or business administration, as required on the labor certification, ETA Form 9089, to qualify for the job. Therefore, the beneficiary was not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act. In addition, the NSC Director cited the name change from Minecode LLC to Longtop International LLC as an "unresolved issue" because "no change of name documentation has been submitted" and the documentation of record "tends to reflect an acquisition of the petitioner by Longtop International" rather than a mere name change.

The petitioner filed an appeal on March 9, 2011, followed by a brief from counsel and supporting documentation. Counsel reiterates his claim that the beneficiary meets the minimum educational requirements for the proffered position and for classification as an advanced degree professional. Counsel asserts that the NSC Director did not properly consider previously submitted evidence regarding the U.S. equivalency of the beneficiary's education. Counsel also contends that previously submitted evidence of the petitioner's name change was not taken into consideration.

The issues before the AAO, therefore, are the following:

- Has the petitioner established that Longtop International LLC is merely a change of name, and not a successor-in-interest, vis-à-vis Minecode LLC?

- Does the beneficiary have the requisite educational credential(s) to be eligible for classification as an advanced degree professional under section 203(b)(2) of the Act?

- Does the beneficiary have the requisite educational credential(s) to qualify for the job of financial manager under the terms of the labor certification?

Is Longtop International LLC a change of name, or successor-in-interest, vis-à-vis Minecode LLC?

Based on the documentation of record – including a photocopied certification on the letterhead of the State of Washington, Secretary of State, dated August 30, 2007, that Minecode LLC had changed its name to Longtop International LLC; and the beneficiary's Forms W-2, Wage and Tax Statements, for the years 2006-2008 which identify his employer as Minecode LLC in 2006 and Longtop International LLC in 2007 and 2008, each with the same Federal Employer Identification Number (FEIN) – the AAO is persuaded that Longtop is not the successor-in-interest to Minecode, but rather the same company with a different name. Accordingly, Longtop International LLC will be recognized as the proper and rightful petitioner in this proceeding.

Is the Beneficiary Eligible for the Classification Sought?

As previously discussed, the ETA Form 9089 in this case is certified by the DOL. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. *See* Section 212(a)(5)(A)(i) of the Act, 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).[2] This decision involved a petition filed under 8 U.S.C. §1153(a)(3) of the Act, as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Immigration Act of 1990 Act added section 203(b)(2)(A) to the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

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[2] In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244, is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference (advanced degree professional) immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the INS responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a

combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[3] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2).

The degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).[4]

The documentation of record shows that the beneficiary earned the following educational credentials in India:

- a Bachelor of Commerce from the University of Rajasthan (Jaipur) on June 29, 1995, following completion of a three-year degree program;
- a Certificate of Merit from The Institute of Cost and Works Accountants of India (ICWAI), dated March 17, 1998, following passage of the Final Examination in December 1997;

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[3] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

[4] *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

- a Final Examination Certificate from The Institute of Chartered Accountants of India (ICAI), dated January 11, 1998, following passage of the Final Examination in November 1997. Thereafter, the beneficiary was admitted as an Associate of the Institute on January 4, 2002, and was awarded a Certificate of Membership in the ICAI, dated January 31, 2002.

In his denial decision the NSC Director noted that the beneficiary's bachelor of commerce is only a three-year degree. As such, it is not considered equivalent to a four-year bachelor's degree in the United States. *See Matter of Shah*. This finding accords with information in the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which USCIS consults as a resource to evaluate the U.S. equivalency of foreign educational credentials. According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[5] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[6]

EDGE states that a Bachelor of Commerce degree in India is awarded upon completion of two to three years of tertiary study beyond the Higher Secondary Certificate (comparable to a U.S. high

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[5] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

[6] In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL [redacted] (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL [redacted] (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

school diploma), with the great majority being awarded after three years of tertiary study. The Indian degree is comparable to study at a U.S. college or university for the same number of years. According to EDGE, therefore, the beneficiary's three-year bachelor's degree from the University of Rajasthan is most likely comparable to three years of study at a U.S. college or university.[7] As such, it is not equivalent to a U.S. bachelor's degree.

With regard to the beneficiary's ICWAI credential, EDGE states that an ICWAI Final Exam certificate and membership in the Association is:

> Awarded upon passing of Final Examination of the Institute and obtaining for a period of not less than three years of practical experience covering different branches of Costing or Industrial Accounting. The practical experience as above may be acquired prior to or after passing the Final Examination or partly before and partly after passing the final examination. The Associate Membership of the ICWAI is a professional qualification awarded upon passing the ICWAI Final Exam and meeting the requirements as stated above.

http://edge.aacrao.org/country/credential/institute-of-cost-works-accountants-of-india-icwai-final-exam-award-of-association-membership?cid=single (accessed November 26, 2012). EDGE states that passage of the ICWAI Final Exam and Association Membership "represents attainment of a level of education comparable to a bachelor's degree in the United States." *Id.*

There is no evidence in the record that the beneficiary obtained Association membership after passing the ICWAI final examination. Without membership in the ICWAI, the beneficiary's final examination certificate would not be comparable to a U.S. bachelor's degree according to EDGE. Furthermore, the full ICWAI credential (Final Examination certificate and Association membership) is not based on a four-year educational program, but instead relies on a combination of instruction, practical experience, and examinations. Therefore, even if the beneficiary had the full ICWAI credential, it would not make him eligible for professional classification. The pertinent regulation reads as follows:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. *Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.* To show that the alien is a member of the professions, the

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[7] The EDGE-based assessment of the beneficiary's education is consistent with an Evaluation Report submitted by the petitioner from the Foundation for International Services, Inc. (FIS), dated June 15, 2006. The FIS report evaluated the beneficiary's three-year degree from Rajasthan University as equivalent to three years of study at an accredited college or university in the United States.

> petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added). The ICWAI, as noted by the NSC Director in his revocation decision, is a membership organization, not a degree-granting institution, and the ICWAI's final examination certificate is not a U.S. baccalaureate or foreign equivalent degree. Accordingly, the beneficiary's Certificate of Merit from ICWAI does not entitle him to classification as an advanced degree professional under section 203(b)(2) of the Act.

With regard to the beneficiary's ICAI credential, EDGE states that an ICAI Final Examination certificate and membership in the Association is:

> Awarded upon two years of study beyond the ICAI Intermediate Exam [two years of study also precede the Intermediate Exam] and upon passing the ICAI Final Exam.

http://edge.aacrao.org/country/credential/institute-of-chartered-accountants-of-india-icai-final-exam-and-award-of-association-membership?cid=single (accessed November 26, 2012). EDGE states that passage of the ICAI Final Examination and Association membership "represents attainment of a level of education comparable to a bachelor's degree in the United States." *Id.*

As previously discussed, however, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the beneficiary have a U.S. baccalaureate or foreign equivalent degree and evidence thereof in the form of an official college or university record to be eligible for professional classification. The ICAI is not an academic institution that can confer a degree with an official college or university record. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006) (finding USCIS was justified in concluding that ICAI membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree). Like the ICWAI, the ICAI is a membership organization, not a college or university, and its Final Examination Certificate is not a degree. While the beneficiary's Final Examination Certificate and membership in the ICAI may be "comparable" to a U.S. bachelor's degree, they are not, either individually or together, a "foreign equivalent degree" to a U.S. baccalaureate degree within the meaning of 8 C.F.R. § 204.5(k)(2). Accordingly, they do not entitle him to classification as an advanced degree professional under section 203(b)(2) of the Act.

On appeal, the petitioner reiterates its previous contention that the beneficiary meets the minimum requirement for classification as an advanced degree professional based on a bachelor's degree and five years of experience.[8] As evidence of the beneficiary's bachelor's degree equivalency counsel

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[8] As evidence of the beneficiary's work experience, the record includes a letter from the Senior Vice President–Finance of Satyam Computer Services Ltd. in Parsippany, New Jersey, dated September 8, 2005, which stated that the beneficiary was employed from April 1998 to November 2003, initially as a Finance Executive and later as Chief Finance Manager, and described in detail his job duties over the years.

cites several previously submitted evaluations of the beneficiary's educational credentials.

The first evaluation is from the Foundation for International Services, Inc. (FIS), dated June 21, 2006. The FIS evaluation, authored by [redacted] claims that the beneficiary's three-year Bachelor of Commerce degree from the University of Rajasthan and his Final Examination Certificate from the ICAI are equivalent to a bachelor's degree in accounting from a U.S. college or university. The FIS evaluation provides no substantive analysis of the above credentials. [redacted] simply states her conclusion as to their cumulative equivalency in the United States, while ignoring the fact that the foregoing credentials – a three-year bachelor's degree and Final Examination Certificate from the ICAI – do not include four years of study at a degree-granting institution, the standard length of a U.S. baccalaureate degree. *See Matter of Shah.* Nor do the subject credentials meet the regulatory definition of a single "United States baccalaureate degree or a foreign equivalent degree" in 8 C.F.R. § 204.5(k)(2).

A second evaluation, dated August 6, 2010, is from [redacted] of Career Consulting International (CCI). The CCI evaluation claims that the beneficiary's Certificate of Merit from the ICWAI, awarded after he passed the ICWAI's Final Examination, is equivalent to a U.S. Bachelor of Science degree with a major in accounting from a U.S. college or university. The evaluation provides no substantive analysis of the ICWAI program. [redacted] simply states that the evaluation of the U.S. equivalency of the beneficiary's credential is based on "the credibility of [ICWAI], the nature of the course work, and the related areas." The CCI evaluation does not discuss how long the beneficiary studied at the ICWAI before his final examination. In particular, it does not confirm that the program comprised four academic years, the standard length of a bachelor's degree program in the United States. *See Matter of Shah.* Thus, even if the ICWAI were a degree-granting institution, the CCI evaluation provides no basis to conclude that the beneficiary's Certificate of Merit would be equivalent to a U.S. bachelor's degree.

A third evaluation, also dated August 6, 2010, is from [redacted] of European-American University (EAU). Like CCI, the EAU evaluation claims that the beneficiary's Certificate of Merit from the ICWAI, awarded after he passed the ICWAI's Final Examination, is equivalent to a U.S. Bachelor of Science degree with a major in accounting from a U.S. college or university. [redacted] cites a letter from the Association of Indian Universities (AIU), dated April 22, 2008, stating that a three-year bachelor's degree plus a Final Examination certificate from the ICWAI would be assessed as a master's degree equivalent in India. [redacted] then asserts that an Indian master's degree is equivalent to a U.S. bachelor's degree plus one additional year of university study. The AAO does not agree with this analysis. The AIU letter addresses the educational equivalence of an Indian bachelor's degree and an ICWAI certificate for the purpose of higher education in India, not the United States. The AIU's conclusion that the referenced credentials are equivalent to an Indian master's degree has no bearing on the equivalency of those credentials in the United States as determined by U.S. Citizenship and Immigration Services (USCIS). [redacted] evaluation dodges the fact that the beneficiary's Indian credentials – a three-year bachelor's degree and an ICWAI certificate – do not include four years of study at a degree-granting institution, the standard length of a U.S. baccalaureate degree. *See Matter of Shah.* Nor do the subject credentials meet the regulatory

definition of a single "United States baccalaureate degree or a foreign equivalent degree" in 8 C.F.R. § 204.5(k)(2).

[redacted] cites a document of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) entitled "Recommendation on the Recognition of Studies and Qualifications" that was adopted by the General Conference of UNESCO in 1993. Paragraph 1(e) defines recognition as follows:

> 'Recognition" of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State and deemed comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for inclusion in a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.

According to [redacted] the United States is bound by a UNESCO (United Nations Educational Scientific and Cultural Organization) convention regarding international recognition of foreign educational credentials – specifically, the Lisbon Convention. [redacted] asserts that the United States signed and ratified the Lisbon Convention (officially called the Convention on the Recognition of Qualifications concerning Higher Education in the European Region) and that the Convention entered into force in the United States on July 1, 2003. [redacted] is mistaken. While the United States did sign the Lisbon Convention on November 4, 1997, the Convention has never been ratified by the United States and it has not entered into force in the United States. *See* http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM-8&CL=ENG (accessed November 27, 2012). Moreover, the Convention does not bind the signatory states to any particular outcomes in assessing the equivalency of foreign education. Rather, it commits the signatories to certain standards and procedures in evaluating foreign educational credentials, while reserving the ultimate decision-making power in the signatory states. *See* http://convenstions.coe.int/Treaty/en/Treaties/Html/165.htm (accessed November 29, 2012).

For all of the above reasons, the EAU evaluation is not persuasive evidence that the beneficiary's three-year bachelor's degree and ICWAI certificate are equivalent to a U.S. baccalaureate degree.

Evaluations of a person's foreign education by credentials evaluation organizations are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *see also Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Based on the foregoing discussion, the AAO determines that the evaluations of [redacted] (FIS), [redacted] (CCI), and [redacted] (EAU) have little probative value. They are not persuasive evidence that the beneficiary's Indian credentials – in particular, his three-year bachelor of commerce degree and his final examination certificates from the ICWAI and the ICAI – are either individually, collectively, or in any combination equivalent to a U.S. bachelor's degree.

For all of the reasons discussed in this decision, the AAO concludes that the beneficiary does not have a foreign equivalent degree to a U.S. baccalaureate degree within the meaning of 8 C.F.R. § 204.5(k)(2). Therefore, he is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act. Accordingly, the petition cannot be approved.

2. Is the Beneficiary Qualified for the Job Offered?

To be eligible for approval as an advanced degree professional, the beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House* at 158.

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu,* 736 F. 2d at 1309.

The key to determining the job qualifications is found in ETA Form 9089, Part H. This part of the application describes the terms and conditions of the job offered. It is important that the application be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

The petitioner specified the following educational, training, and experience requirements for the financial manager position:

- A master's degree or a "foreign educational equivalent" in accounting, business administration, or finance, plus one year of experience in the job offered or as an account manager or finance manager (Part H, lines 4, 4-B, 6, 9, 10, 10-A, and 10-B).

- Alternatively, a bachelor's degree or a "foreign educational equivalent" in one of the above-named fields, plus five years of progressive experience (Part H, lines 8, 8-A, 8-C, and 9).

- No training is required. (Part H, line 5).

In Box 14 of the ETA Form 9089 (Specific skills or other requirements), the petitioner described some particular items of experience required for the proffered position, and also stated that "any suitable combination of education, training or experience are acceptable" to qualify for the job.

The AAO does not interpret the "any suitable combination" language in Box 14 as modifying the specific requirements listed in lines 4 through 10-B. The general language in Box 14 must yield to the specific requirements listed above. Box 14 simply confirms that the employer will accept either a master's degree and one year of experience or a bachelor's degree and five years of experience.

The petitioner does not claim that the beneficiary has a U.S. master's degree or a foreign equivalent degree. With respect to the alternative combination of education and experience, the record appears to indicate that the beneficiary has five years of qualifying experience, as previously noted. However, the beneficiary does not have a U.S. bachelor's degree or a foreign equivalent degree. Therefore, the beneficiary does not satisfy the minimum educational requirement of the labor certification to qualify for the proffered position. For this reason as well, the petition cannot be approved.

Conclusion

The petition is deniable on two grounds:

1. The beneficiary does not have the requisite educational degree – specifically, a U.S. bachelor's degree or a "foreign equivalent degree" – to be eligible for classification as an advanced degree professional under section 203(b)(2) of the Act.

2. The beneficiary does not qualify for the proffered position of financial manager under the terms of the labor certification because he does not have the requisite educational degree – specifically, a U.S. bachelor's degree or a "foreign educational equivalent."

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. Accordingly, the NSC Director's decision to deny the petition will be affirmed. The appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The Director's decision of February 22, 2011, denying the petition, is affirmed. The appeal is dismissed.